

### Judge Bradford, cont.

duction of juvenile pretrial incarceration in Marion County that is now a statewide model.

Before joining the bench, he was recruited by Marion County Prosecutor Scott Newman as Chief Trial Deputy, in which capacity he managed a staff of more than 100 attorneys for two years. He also served five years as an Assistant United States Attorney for the Southern District of Indiana, where he prosecuted major felony drug cases under United States Attorney Deborah J. Daniels. He was in private legal practice from 1986 to 1991.

A native Hoosier, Judge Bradford earned a B.A. in labor relations and personnel management from Indiana University-Bloomington in 1982 and his J.D. from Indiana University School of Law-Indianapolis in 1986. He is the Court of Appeals' liaison to the Indiana Judges Criminal Instructions Committee, which provides guidance to judges on jury instructions in criminal cases, and he is a former member of both the Indiana Judges Criminal Policy Committee and the Board of Directors of the Indiana State Judicial Conference.

Judge Bradford is a Distinguished Senior Fellow of the Indianapolis Bar Association and a member of the Marion County Bar Association, Kosciusko County Bar Association, Indiana State Bar Association, American Bar Association, and the Sagamore Inn of Courts. He has taught Indiana Continuing Legal Education Foundation trial practice seminars for more than 10 years and also teaches Forensic Science and the Law at Indiana University-Purdue University Indianapolis, where he is an adjunct instructor.

Judge Bradford is well versed in contemporary technology and media issues, having served on the Judicial Technology and Automation Committee (JTAC), helping to draft the state judiciary's policies on technology and case management. From 2005 to 2007, he hosted "Off the Bench with Judge Cale Bradford," a legal commentary program on Marion County's government access network.

Judge Bradford is a former director of the John P. Craine House in Indianapolis, a residential alternative to incarceration for women offenders with preschool-aged children. He is a former advisory board member of the Lawrence Youth Football League and has long been active at Castleton United Methodist Church.

He and his wife, Sam, a full-day kindergarten teacher, have five adult children.

### Judge Mathias, cont.

brought the management of state court records into the 21st Century.

Judge Mathias is a longtime supporter of *We the People*, a national civics education program sponsored in Indiana by the Indiana Bar Foundation. He coaches high school *We the People* teams in Indiana's 5th Congressional District and helps organize *We the People* competitions in the 3rd Congressional District.

In 2010, he received the Indiana Bar Foundation's William G. Baker Civic Education Award for his work in civics education.

Judge Mathias has been married for 36 years and is the proud father of two sons who teach at the high school level. His wife, Carlabeth, is a private practice counselor for children and families and a consultant to schools throughout Indiana.

Judge Mathias enjoys Macintosh computers, technology in general and photography. He also enjoys spending many Saturdays during the school year helping to build theatrical sets for Hamilton Southeastern High School.

### Attorneys for the Parties in today's oral argument

#### For the Appellant

**Anthony W. Overholt** has extensive experience representing municipal entities, as well as private companies. He is an experienced litigation attorney with numerous jury and bench trials in federal and state court, with substantive concentrations in labor, employment discrimination, general litigation and constitutional law.

He also has significant class-action and appellate experience. He has argued dozens of cases before Indiana appellate courts and the 7th U.S. Circuit Court of Appeals.

As part of his representation of local governments, he assists with negotiating collective bargaining agreements with public sector unions and has assisted in managing public relations strategies relating to those negotiations.

#### For Appellee Chance Jackson

**Tom Blessing** practices education law,

personal injury and business litigation with Hollingsworth & Zivitz, PC in Carmel, IN.

Born and raised in the Chicago suburbs, he now lives in Indianapolis. He holds a BA *cum laude* in political science from DePauw University (1987) and JD from Indiana University School of Law (1991), where he was active in moot court and Dean's tutorial society. Bar admissions include Indiana, the Northern and Southern Districts and the Seventh Circuit.

He has extensive trial experience, including jury trials, court trials and administrative hearings. In addition to researching and writing several appellate briefs, he has argued before the Indiana Supreme Court and Seventh U.S. Circuit Court of Appeals.

He has two children and enjoys core training, walking and watersports. His favorite charitable causes are autism and breast cancer awareness.

#### For Appellee Kelli Dearth

**Ian Thompson** has practiced as an associate attorney at Frazier Law Firm and as a sole practitioner in the Indianapolis area since October 2005. His primary practice areas include personal injury, criminal defense and family law.

Mr. Thompson was born and raised in Salem, IN, where his father practices law and his grandfather served as Washington County Superior Court Judge for nearly 20 years.

Mr. Thompson attended Indiana University-Bloomington where he graduated with distinction with a Bachelor's Degree in Criminal Justice in 2002. In 2005 he graduated from Indiana University School of Law-Indianapolis, where he participated in Moot Court, Client Counseling Competition and was a member of the Sports & Entertainment Law Society. He is admitted to the U.S. District Court for both Northern and Southern Indiana.

## COURT OF APPEALS OF INDIANA ORAL ARGUMENT AT A GLANCE

TAYLOR UNIVERSITY

# Martinsville MSD v. Jackson, et al

### CIVIL LAW ISSUES:

- Whether State Law immunizes Appellant from liability;
- Whether Appellant breached its duty to Appellee;
- Whether Appellant should have foreseen the events at issue;
- Whether summary judgment can appropriately determine the facts at hand.

### ORAL ARGUMENT:

Wednesday, April 16, 2014  
1:30 p.m.

### APPEAL FROM:

Morgan Superior Court  
The Honorable  
G. Thomas Gray, Judge

## Synopsis: Case No. 55A01-1304-CT-182

**Early** on the morning of March 25, 2011, Michael Phelps confronted Chance Jackson in a vestibule of Martinsville West Middle School ("MWMS") and fired two gunshots into Jackson's stomach. Phelps was a former MWMS student, who, after making a threat to blow up the school, had recently been prohibited by school administration from entering school grounds. The shell casings from the gun hit another nearby student, Brandon Kent, and injured his hand.

Phelps and Jackson had been friends at one time, but their relationship had deteriorated over the last few years, culminating in a bitter dispute over a girl they had both dated, N.A. Phelps had an extensive disciplinary record at MWMS, with referrals ranging from disobeying school rules to theft to threatening

other students. In the weeks preceding the shooting, Phelps had made several threats against Jackson, allegedly because Jackson had spread offensive rumors about N.A.

After the shooting, Phelps was convicted of attempted murder and sentenced to 35 years in prison. Approximately one month later, Jackson and his mother sued the Metropolitan School District of Martinsville, claiming that the School District breached its duty of care by failing to protect Jackson from Phelps. Kent filed a similar complaint several months later, and the trial court consolidated the two lawsuits.

The School District then filed a motion for summary judgment, arguing that it was immune from liability under the Indiana Tort Claims Act; that the School District did not

breach its duty to Jackson; that the shooting was not foreseeable; and that Jackson was contributorily negligent. The trial court denied the School District's motion.

On appeal, the School District argues that it is immune from liability because the allegedly negligent actions involve the School District's performance of a discretionary function, and, thus, are immune from civil liability under the Indiana Tort Claims Act ("ITCA"). The ITCA governs tort claims against governmental entities and public employees and grants immunity to an entity for "performance of a discretionary function." A "discretionary function" is one which involves "the formulation of basic policy" rather than the

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Case synopsis, cont.

mere “execution or implementation of that policy.”

The School District argues that the safety plan it implemented at MWMS was the result of conscious balancing of risk and benefits, and that such decisions are “quintessential discretionary functions.”

The School District also argues that there was no breach of duty because MWMS personnel properly implemented the school’s safety plan the morning of the shooting, with employees appointed as monitors stationed at various points around the school grounds as students arrived at school, and cameras surveying three of the school entrances.

The School District claims that the monitors stationed outside knew that Phelps was not permitted on school grounds but did not see him because the sun had not yet risen when he arrived, he was wearing a dark-colored hooded sweatshirt that obscured his head and face, and he purposefully moved to avoid detection.

The School District further claims that there was no evidence that it knew or should have known that Phelps intended to attack Jackson the morning of March 25, 2011, and that its liability should only extend to incidents that are foreseeable.

It points out that C.H., a student at MWMS who claimed that she had informed the school’s principal of Phelps’s plan, later retracted this statement. It also argues that the evidence of the conversations that various school personnel had had with students regarding Phelps’s desire to fight with Jackson was not enough to establish that the School District should have known that Phelps planned to attack Jackson the morning of March 25.

Finally, the School District argues that Jackson was “contributorily negligent and incurred the risk of his injuries.” It claims that when Phelps approached Jackson in the school vestibule on the morning of March 25, left the vestibule, and then returned a few minutes later, Jackson should have heeded the advice he received from his mother and reported Phelps’s threats to the school office.

The School District asserts that, due to the threats Phelps had been making to Jackson over the last sev-

Judge Robb, cont.

guished Fellow of the Indianapolis Bar Foundation. She is a frequent speaker on legal topics for attorneys, other judges, and professional, civic and community organizations.

Judge Robb was Founding Chair of Governor Bowen’s Commission on the Status of Women; was a recipient of a 1993 Indiana State Bar Association’s “Celebrating 100 Years of Women in the Legal Profession” award; the 2005 Indiana State Bar Association’s Women in the Law Recognition Award; the 2006 Tippecanoe County YWCA Salute to Women “Women of Distinction” Award; the 2010 Indiana University Alumni Association President’s Award; a 2010 Indiana Lawyer Distinguished Barrister Award, the 2011 Indianapolis Bar Association Women and the Law Committee’s Antoinette Dakin Leach Award and the 2011 David Hamacher Award from the Appellate Practice Section of the Indiana State Bar Association.

Judge Robb chairs the Supreme Court Task Force on Family Courts and is involved in several projects to

eral weeks, Jackson was aware of the risk of injury posed by Phelps but chose to remain in the vestibule anyway, even when he had opportunity to leave.

Jackson and Kent (“the Plaintiffs”) argue that this court should affirm the trial court’s denial of the School District’s motion for summary judgment. The Plaintiffs assert that the School District is not protected by the ITCA’s discretionary function immunity exception in this case because it is not the safety plan itself that is challenged, but, rather, the failure to use reasonable care to protect its students.

To support their argument, the Plaintiffs cite King v. Ne. Sec., Inc., where the Indiana Supreme Court held that “a school district is not immune from a claim that the district failed to take reasonable steps to provide security for persons on its premises.”

The Plaintiffs further assert that “discretionary function immunity must be narrowly construed, and only significant policy decisions that cannot be assessed by tort standards are insulated from liability.”

benefit the Indiana legal system. She also chaired the Supreme Court task force for the development of Trial Court Local Rules, has also served as a member of the Indiana Board of Law Examiners, the Governance Committee of the Supreme Court IOLTA (Interest on Lawyer Trust Account) Committee; the Federal Advisory Committee on Local Rules for the Federal Court for the Northern District of Indiana; and the Federal Advisory Committee for the Expediting of Federal Litigation.

In addition, she serves on the ABA Committee that accredits law schools and Chaired the 2010 ABA’s Appellate Judges Council - Appellate Judges Education Institute’s national Summit for Judges, lawyers and Staff attorneys. Judge Robb is an elected member of the American Law Institute (ALI).

Judge Robb was retained on the Court of Appeals in 2000 and 2010, is married to a professor at Purdue University. Their son, a graduate of the United States Naval Academy, is a Lieutenant on active duty in the United States Navy.

They claim that the School District’s actions in this care were not significant policy decisions, but, rather, “simple negligent acts of omissions.”

The Plaintiffs also argue that questions regarding the duty the School District owed to the Plaintiffs, the extent to which the School District breached that duty, and the question of Jackson’s contributory negligence are questions for the trier of fact, making the case inappropriate for dismissal by summary judgment.

Finally, the Plaintiffs argue that in light of Phelps’s history of bad behavior, his threat to blow up the school, and another student’s threat to shoot a teacher the day before Jackson’s shooting, the School District could not show that the shooting was not foreseeable.



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Today’s Panel of Judges

*The Honorable  
Paul D. Mathias  
(Allen County)*

**Paul D. Mathias** is a fifth-generation Hoosier who deeply believes that Indiana is a special place to live. He is honored to serve on the Court of Appeals, where he strives daily to reflect and protect Hoosier values within the law.

Judge Mathias practiced law in Fort Wayne, concentrating in construction law, personal injury, and appellate practice. He was appointed Referee of the Allen County Small Claims Court in 1985 and served as Judge of the Allen Superior Court from 1989-2000 when he was appointed to the Court of Appeals. In 2002, he was retained by election to the court.

Judge Mathias’s professional achievements are rooted in a strong educational foundation. He attended the public schools in Fort Wayne, where he was a National Merit Finalist and scholarship recipient. In 1976 Judge Mathias graduated *cum laude* from Harvard University with a bachelor’s degree in General Studies, concentrating in Government. He earned his law degree in 1979 from Indiana University School of Law-Bloomington, where he was a member of the Sherman Minton Moot Court Team and the *Order of Barristers*.

Judge Mathias was an officer of the Indiana Judges Association from 1993-1999 and its president from 1997-1999. He is deeply honored to be one of only 92 Hoosiers to receive the Centennial Service Award from the Indiana State Bar Association, and he was named a Sagamore of the Wabash by two governors. Judge Mathias is keenly interested in the intersection of law and technology and often consults and speaks on tech topics to attorneys and judges. As a member of the Judicial Technology and Automation Committee, he helped select the Odyssey Case Management System that

*The Honorable  
Margret G. Robb  
(Tippecanoe County)*

**Margret G. Robb** was appointed to the Court of Appeals of Indiana in July 1998 by Governor Frank O’Bannon. She holds a B.S. and an M.S. in Business Economics from Purdue University, a Magna Cum Laude J.D. from Indiana University Robert H. McKinney School of Law and is a graduate of the Graduate Program for Indiana Judges. In 2011 she began a three year term as Chief Judge; the first woman to hold that position in the Court’s more than 100 year history.

Prior to her appointment to the Court, Judge Robb was, for 20 years, engaged in the general practice of law in Lafayette, and served as a Chapter 11, 12 and a standing Chapter 7 Bankruptcy trustee for the Northern District of Indiana. She was a registered family and civil mediator and served as a Tippecanoe County Deputy Public Defender.

She has been an officer of the Indiana State Bar Association, the Fellows of the Indiana State Bar Foundation, Tippecanoe County Bar Association, National Association of Women Judges, the Indiana University School of Law- Indianapolis Alumni Association and the Bankruptcy Section of the Indiana State Bar Association.

She has also been a Board member of the Appellate Judges Council of the American Bar Association, the Indianapolis Bar Association, the Indianapolis Bar Foundation, the Senior Council Section of the Indianapolis Bar Association, the Appellate Practice Section of the Indiana State Bar Association and the Appellate Judges Education Institute.

She was the moderator for the 2005-2006 and Chair for the 2006-2007 Indianapolis Bar Association’s Bar Leader Series, and is a member of the American Bar Foundation, American Judicature Society, a Master Fellow of the Indiana State Bar Foundation and a Senior Distin-

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*The Honorable  
Cale J. Bradford  
(Marion County)*

**Cale J. Bradford** has broad experience in both the state and federal legal systems, including service as a Marion County deputy prosecutor, a public defender, a federal prosecutor, a trial court judge and an appellate court judge. In addition, he has six years’ experience in private legal practice.

He was appointed to the Court of Appeals of Indiana by Gov. Mitch Daniels and took his seat on Aug. 1, 2007. In that time, he has participated in more than 2,000 appellate decisions and more than 80 oral arguments. He has written more than 700 majority decisions, including 145 published opinions. Judge Bradford also led a successful effort to encourage the mediation of legal disputes pending before the Court of Appeals, and greatly contributed to creation of the Judicial Retention website that helps voters make informed decisions about Appellate Judges standing for retention election.

Before joining the Appeals Court, he served the people of Marion County for more than 10 years as Judge of the Marion Superior Court, including seven years in the criminal division and three in the civil division. Twice, his colleagues elected him as presiding judge of the Court.

During that tenure, Judge Bradford led two major initiatives that addressed critical criminal justice issues facing Marion County. He chaired the Marion County Criminal Justice Planning Council, which recommended improved responses to jail overcrowding, staffing and budgets. Those efforts led to the end of 30 years of federal oversight of the Marion County Jail and to security improvements at the county’s Juvenile Detention Center. He also led implementation of the Annie E. Casey Foundation Juvenile Detention Alternative Initiative, which resulted in a comprehensive yet responsible re-

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